



Canadian Association of Black Lawyers

L'Association des Avocats Noirs du Canada

May 14, 2015

Via Email

Ms. Joséé Bouchard
Director, Equity Initiatives Department
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Dear Ms. Bouchard:

Re: Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees Consultation Paper

The Canadian Association of Black Lawyers (“CABL”) takes this opportunity to offer the following submissions in respect to the above-noted Consultation Paper authored by The Challenges Faced by Racialized Licensees Working Group (the “Working Group”). We note that CABL Board members and other CABL members have participated in the in-person consultation process following the publication of the Consultation Paper. These submissions are not meant to modify or abrogate from those individual submissions in any respect.

CABL is a national network of law professionals with an overall mandate to promote the advancement of black lawyers within the profession by providing support systems, promoting academic and professional excellence and advancing issues of equity and diversity among the bar and judiciary. CABL is both a member of The Law Society of Upper Canada (the “Law Society”)’s Treasurer’s Liaison Group and a member of the Law Society’s Equity Advisory Group (“EAG”). CABL is also a member of the Ontario Bar Association (“OBA”)’s Diversity Program and a member of the Toronto Lawyers Association (“TLA”)’s Roundtable of Diversity Associations (“RODA”). CABL has participated in numerous consultations with the Law Society, the Canadian Bar Association (“CBA”) and the OBA on issues of access, diversity and equity affecting the legal profession and the legal system within Canada and Ontario.

We wish to commend the Law Society and the Working Group on the comprehensive and detailed scope of the Consultation Paper. As you are aware, CABL has long been advocating for a comprehensive investigation by the Law Society into the experiences of Racialized Lawyers, and in particular Black Lawyers, based upon concerns raised by CABL members and others relating to their experiences within the profession; from the articling stage and subsequent. We note that a summary of those experiences have been materially captured throughout the Consultation Paper. In that regard, these submissions shall focus more particularly on responding to the Questions for the Profession section of the Consultation Paper and our additional submissions in relation thereto.

I. ENHANCING THE INTERNAL CAPACITY OF ORGANIZATIONS

The mandate, and reasons for the mandate of the Law Society in this area, is readily apparent: as a regulator, the Law Society's interest should be to ensure that members of the profession are being treated with fairness and dignity by other Licensees and in a manner which enhances the diversity of the profession and provides equal opportunities to all members thereof.

The Law Society has a crucial role to play to establish "best practices" by way of policies, standards and resources devoted to the recruitment, retention and career progression of Racialized Licensees within law firms and other legal organizations, such as legal clinics, in house legal departments, etc. (collectively "Legal Organizations").

Similar to the Justicia Project in respect to addressing gender imbalance and discrimination within the profession, the Law Society should be addressing the lack of opportunities for Racialized Licensees within the legal profession. While as a minimum, the Law Society should be expanding the scope of the Justicia Project to include Racialized Licensees, CABL maintains that more significant strategies are necessary to address the issues raised in the Consultation Paper.

A. Establishing Diversity Programs Within Firms

While the Law Society has identified three proposed models in this area, CABL does not see them as mutually exclusive. Rather, they are interrelated and complementary to each other.

As the Consultation Paper notes, the Law Society already has a template for approaching these issues by way of the Justicia Project materials distributed to law firms. However, CABL advocates that unlike the Justicia Project, the Law Society should be requiring Legal Organizations to commit, by way of a written agreement, to adopt diversity "best practices" within their respective Legal Organizations as per the Law Society guidelines and as more particularly discussed below.

B. Self-Assessment

There is little point to Legal Organizations developing and adopting "best practices" without a form of self-assessment tool to measure their progress in respect to both implementation and results. The self-assessment aspect is **critical**.

C. Requiring Standards

CABL recognizes that this could be a controversial issue. However, we query what concrete steps will be taken by Legal Organizations if there is no element of requirement, as there is with other forms of human rights related policies, so as to promote equality and protect the vulnerable from discriminatory practices. Granted, there are a number of firms who will "opt in" voluntarily, as with the Justicia Project. However, we can see that of the Firms of more than 25 lawyers within the province, only approximately 55 Firms have signed commitment agreements with the Law Society in respect to the current Justicia Project.

The issues identified in the Consultation Paper are also systemic in nature and arguably more difficult than gender discrimination for Legal Organizations to grapple with and address in any effective and systemic way.

Requiring Legal Organizations to adopt recruitment, retention and career advancement standards and resources to provide opportunities for Racialized Licensees would:

- (i) make the efforts of the Law Society in this area more far reaching by ensuring that every legal environment has considered these important issues and has put in place the necessary “best practices” to encourage racial diversity;
- (ii) remove the choice of “opting out” as a clear signal from the Law Society that equity is not a choice but a directive; and
- (iii) allow the Law Society to act as a vehicle for change; by requiring an infrastructure for inclusiveness and accountability within all Legal Organizations.

To be clear, while CABL believes that the Law Society should provide Legal Organizations with proposed best practices template standard policies for recruitment, retention and career advancement of Racialized Licensees, and **require** that every Legal Organization have such policies in place, the actual content of these policies, as long as they contain the essential elements of the best practices standards templates, would be for each Legal Organization to design for itself keeping in mind the nature of the particular Organization.

D. Collecting Demographic Data

CABL wholly endorses the **mandatory** internal collection of demographic data by Legal Organizations in respect of their Racialized Licensees. The internal mandatory collection of data is the only way in which Legal Organizations can monitor, in a transparent fashion, and be accountable for their progress in respect to the policy implementation and their corresponding recruitment, retention and advancement strategies, as well as the resources devoted to such strategies, so as to adjust and modify the strategies for efficacy.

In respect to what use should be made of the internal data collection, the Legal Organizations should be required to report, **on a mandatory basis**, certain aggregate demographic data to the Law Society. Such mandatory data would be in the nature of:

- (i) the size and geographic location of the firm;
- (ii) the racial demographics of the summer/articling/LPP students, associates, partners and paralegals within the Legal Organization;
- (iii) the number of racialized summer/articling students/LLP students who were hired and the number hired back to the Legal Organization and their areas of practice;

- (iv) the number of racialized associates who are employed, the length of employment and their areas of practice;
- (v) the number of racialized partners who are employed, their tenure, their areas of practice, how many were advanced to the partnership from associate status and after how many years;
- (vi) the number of racialized paralegals and their length of employment; and
- (vii) similar information in respect to the Legal Organization's non-racialized licensees for comparison purposes.

The Law Society must provide Legal Organizations with a standard data collection template with the required demographic data to be collected such that there is consistency and reliability among data collection and reporting in order to allow for meaningful analysis of trends and progress.

It has been suggested by some groups, such as the Federation of Asian Canadian Lawyers ("FACL"), that other types of equity demographic data (such as sexual orientation, abilities, socio-economic disadvantage) should also be collected so as to take an intersectionality approach to the analysis. CABL does not have the expertise to assess the proportionate value of such information for the purpose of addressing the issues raised in the Consultation Paper other than to acknowledge the well documented sociological evidence of the intersectionality of race and other factors, such as gender. Accordingly, it may be worthwhile for the Law Society to consult with equity experts as to what indicators would be worthwhile to track.

The mandatory data collected by the Legal Organizations and submitted to the Law Society should be summarized, on an aggregate basis, and reported by the Law Society to the profession annually. This information, together with the Law Society's collection of demographic data through the Licensees Members' Annual Reports (which reporting should also be made **mandatory** on the part of individual Licensees), will provide a clearer understanding of the existing profile of the legal profession within Ontario and can be used to track demographic trends on a short term and long term basis.

The above submissions are in no way meant to be a suggestion or recommendation for the implementation of diversity targets or "quotas". CABL does not believe that diversity targets or quotas are necessary if **mandatory** strategies are put in place, as endorsed above, to encourage and promote systemic organizational change.

CABL is of the view that a requirement of **mandatory** data reporting in respect to certain aggregate information does not require a regulation of Legal Organizations or firms in the same way that such regulation is not required for the Law Society to impose mandatory reporting requirements in respect to the handling of trust funds and other professional requirements. Also, many of the large firms are already required, through the process of diversity and contract compliance procedures, to report similar demographic information as is being proposed above.

Further, the Law Society must engage in a wide spread proactive strategy of education within the profession as to the purpose and goal of mandatory data collection and reporting and emphasize that the purpose is not punitive, but to obtain useful information in order to assist the profession as a whole with useful strategies to promote racial diversity and opportunities within Legal Organizations.

E. Diversity and Contract Compliance

The Law Society's role with in-house legal departments should be similar to that advocated above. In that regard, our recommendations in respect of the Law Society providing templates for mandatory "best practices" policies, standards, mandatory internal data collection and mandatory reporting of certain aggregate data to the Law Society would apply.

With respect to the data collection and reporting of data in relation to the **procurement** of legal services, CABL recommends that the Law Society works directly with the Legal Leaders for Diversity ("LLD"), Law Firm Diversity and Inclusion Network ("LFDIN"), Call to Action and other organizations, to discuss purchasing practices and to **voluntarily** develop model procurement and contract compliance policies as they relate to diversity in order to promote and/or expand the opportunities for Racialized Licensees on significant/important files. CABL also fully endorses that the Law Society encourage such organizations, **on a voluntary basis**, to provide demographic statistics during the RFP and in respect to the file progress.

II. MENTORING, ADVISORY SERVICES AND NETWORKING

A. Mentoring and Advisory Services

CABL is of the view that mentoring, both within the Racialized bar and outside the Racialized bar, is a necessary and crucial part of providing professional opportunities for Racialized Licensees. To that end, CABL approves of and endorses the following mentoring and advisory services:

- (i) that the Law Society develop technology based performance oriented and career and personal advice oriented mentoring and advisory services, based upon best practices, and widely promote their availability; with an emphasis on establishing short and long term mentoring relationships for Racialized Licensees;
- (ii) that the Law Society audit the formal (performance based) and informal (career and personal advice based) mentoring and advisory services available within Legal Organizations, with an emphasis on investigating what specific mentoring and advisory services have been established to address the concerns of Racialized Licensees;
- (iii) that the Law Society make available to Racialized Licensees advisors/coaches who have received diversity training and are available to provide one on one professional career counselling to Racialized

Licensees, from a pool of compensated coaches/advisors, at a cost fully borne by the Law Society;

- (iv) that the Law Society make available to Racialized Licensees performance mentors to provide practice based assistance to Racialized Licensees who do not have access to other practice based information/assistance, from a pool of compensated mentors, at a cost fully borne by the Law Society;
- (v) that the Law Society, in conjunction with Racialized legal and other associations, organize, promote and endorse informal mentorship events (i.e. CABL's Annual Speed Mentoring event). As the Racialized legal associations are not for profit organizations with limited funds, the Law Society should provide financial assistance at least by way of subsidizing the full cost of facilities, security and refreshments etc. to encourage such events; and
- (vi) that Racialized legal associations provide one on one volunteer professional career mentoring and advisory services to their members through a mentoring program organized and implemented by the associations.

B. Networking

As with mentoring, networking is a crucial tool for the creation of opportunities for Racialized Licensees, who, as noted in the Consultation Paper, are often more isolated and lacking support networks. Many of these Racialized Lawyers are in sole practice or small firms of one or two lawyers.

CABL believes that it is crucial to involve Racialized Licensees in both Racialized and non-Racialized network opportunities. Racialized networks are essential for validation, comradery and shared experiences. However, networking opportunities must also extend to the legal "mainstream" in order to create broader professional opportunities.

Resources are a significant impediment to formal networking structures, such as professional development. Racialized legal associations are therefore an excellent source of networking opportunities. To the extent that resources are an impediment for Racialized Licensees to become members of such associations, the Law Society could offer subsidies to assist Racialized Licensees to join such organizations for a fixed period of time (i.e. one or two year membership years). This would allow the Racialized Licensees to avail themselves of the networking (and mentorship) benefits of such associations at a reduced cost for a period of time and thereafter they would be persuaded to continue membership at regular cost on the basis of the beneficial networking and mentorship experiences/services such associations provide.

More difficult is how to achieve networking opportunities among the mainstream Legal Organizations. One way is for the Law Society to encourage mainstream Legal Organizations to

offer regular “networking invitations” to Racialized Legal Associations to promote dialogue and interaction.

We note that the Internationally Trained Lawyers have the same access to Racialized Legal Associations as do other Racialized lawyers.

III. ENHANCING CULTURAL COMPETENCE IN THE PROFESSION

CABL believes that all of the three proposals contained in the Consultation Paper are advisable. There should certainly be more availability of accredited CPD Programs on cultural competence and equity principles of diversity inclusion and systemic bias. Further, the Professional Responsibility and Practice (“PRP”) Course should include cultural competency, diversity and inclusion as **mandatory** topics for accreditation.

In the same vein, accredited lawyers should be required to evidence their continued cultural competence by engaging in at least **one hour** of CPD annually, as part of the current 3 hours of mandatory professionalism hours, on cultural competence, equity and diversity as these issues impact upon the practice of law and the experiences of Racialized Licensees and their career development opportunities. Both the widespread availability of such programs and the one hour requirement go hand in hand. These CPD programs should be taught by individuals with equity and diversity expertise and they themselves should be demographically diverse.

IV. DISCRIMINATION AND THE ROLE OF THE COMPLAINTS PROCESS

The Law Society has a critical role to play in ensuring that Racialized Licensees’ legal right to be free from discrimination is enforced. While updating the Rules of Professional Conduct and the Paralegal Rules of Conduct is a first step, much more needs to be done to address what is essentially a systemic problem within the profession. Specific CPD programs and mandatory one hour CPD on cultural sensitivity/systemic bias has been mentioned above. Communication to the profession is another important element as are the recommended strategies outlined above in respect of establishing diversity programs within firms.

The Law Society should also take steps to publicize the Discrimination and Harassment Counsel to ensure that Racialized Licensees are fully aware of their right to make a complaint of incidents of harassment and discrimination engaged in by other Licensees to an independent “ombudsman”.

The Law Society should also be allocating resources to the training of specialized Professional Regulation staff to accept and process complaints of racial discrimination and bias as a breach of the Rules of Professional Conduct and Paralegal Rules of Conduct and to have available proper supports to assist complainants with the process. The Law Society should also provide coaches/advisors to discuss and address with complainants the personal and professional issues arising from discriminatory conduct.

The Law Society must be mindful that the confidential reporting of incidents of racial discrimination is extremely difficult for Racialized Licensees. By virtue of the paucity of

Racialized Licensees within Legal Organizations, the fact of a complaint being made to the Law Society about a particular Legal Organization will, by its nature, most likely reveal the identity of the complainant.

Therefore, the Law Society must derive an effective investigation and enforcement mechanism which does not place the Racialized Licensee in harm or subject them to reprisals. Part of the investigation process might involve a general audit of the “respondent” Legal Organization for compliance in respect of the creation and implementation of the “best practices” policies/procedures and a general audit of all Racialized Licensees within the “respondent” as to their experiences so as to not single out the complainant. Again, the primary focus should be to protect the complainant, who is in an extremely vulnerable situation, from reprisal and to remediate the situation rather than to penalize. However, it should be made clear in the Rules of Professional Conduct and the Paralegal Rules of Conduct that reprisals, as well as the discriminatory conduct itself, is a breach subject to prosecution and penalties.

The Law Society should be engaging in direct dialogue with Racialized legal associations as well as the OBA/CBA and county and district law associations, to discuss specific suggestions in order to derive an effective, yet protective, investigation/enforcement process, and as to the mentoring/advisory capabilities of such organizations to assist the Law Society in supporting members engaged in initiating a complaint.

The tracking of such complaints is also necessary so as to create/modify existing strategies and policies based upon efficacy.

CABL is of the view that no regulatory changes would be required to implement the proposals outlined in the Consultation Paper or detailed above. The Law Society has, as part of its current mandate, the regulation of each Licensee and their conduct in respect to the practice of law. The implementation and enforcement of the proposals hereinbefore described are an integral part of such mandate, whether implemented on an individual Licensee or aggregate Firm basis.

V. THE OPERATIONS OF THE LAW SOCIETY OF UPPER CANADA

CABL is in favour of the Law Society’s adoption of Initiatives 1 through 4 of the Consultation Paper. It is important that the Law Society itself engage in, and be seen to be engaging in, the same initiatives as are being proposed for the profession as a whole; including, without limitation, the implementation of “best practices” policies and standards; mandatory internal data collection; mandatory reporting of certain aggregate data and the other proposals discussed herein.

An equity audit of the services provided by the Equity Initiatives Department and publication of such services to the profession would also enhance the importance of the work of the Department and the supports offered.

The “face” of the Law Society needs to undergo significant change. It is not reflective, from Benchers to staff, of the demographics of our profession or the population at large. The Law Society needs to “look at its own house” in respect to its recruitment and hiring practices as well

as retention and career advancement of Racialized individuals (as well as individuals from the other equity seeking groups) to achieve a greater representation of equity seeking individuals in all areas of its operations.

As well, as a priority mandate, the Law Society should embark on equity sensitivity training for Benchers and staff. It is crucial that an equity “lens” be brought to all operations of the Law Society, including Finance and other operations, rather than to approach equity as a “silo” to be addressed only by the Equity and Aboriginal Issues Committee and Equity Initiatives Department. Only by taking such a holistic approach will the Law Society truly achieve equity infused governance, for itself and for the profession as a whole.

We hope that the above submissions are of assistance to the Working Group. CABL remains committed to the work of the Law Society and the Working Group and is fully prepared to participate in the consultation process going forward with a view to finalizing and implementing the proposals under consideration in a fulsome and expeditious manner.

Yours truly,

A handwritten signature in black ink, appearing to read 'Arleen Huggins', with a long horizontal flourish extending to the right.

Arleen Huggins

Immediate Past President and Chair of the Racialized Licensees Subcommittee of the Canadian Association of Black Lawyers

c. Ekuu Quansah